

§ 148.256

§ 148.256 What happens at the conclusion of a formal hearing?

After closing the record of a formal hearing, the Administrative Law Judge (ALJ) prepares a recommended finding on the issues that were the subject of the hearing. The ALJ submits that finding to the Commandant (G-P).

APPROVAL OR DENIAL OF THE APPLICATION

§ 148.276 When must the application be approved or denied?

(a) In 33 U.S.C. 1504, the Deepwater Port Act provides strict timelines for action on a license application, which, if closely observed, can lead to action in just under 1 year. The Coast Guard, in concurrence with MARAD, can suspend the process if an applicant fails to provide timely information or requests additional time to comply with a request.

(b) The Coast Guard must conduct public hearings in each adjacent Coastal State within 240 days of publishing the notice of receipt of a deepwater port license application.

(c) MARAD issues a record of decision (ROD) approving or denying a license application within 90 days after the final public hearing. Actual issuance of a license may not take place until certain conditions imposed by the ROD have been met. Those conditions may include how the applicant must address design, construction, installation, testing, operations, and decommissioning of the port, or meet the requirements of other agencies.

§ 148.277 How may Federal agencies and States participate in the application process?

(a) Under § 148.209, Federal agencies and adjacent coastal States are sent copies of the application. The agencies and States are encouraged to begin submitting their comments at that time.

(b) To be considered, comments from Federal agencies and adjacent coastal States must be received by the Commandant (G-P) within 45 days after the close of the public hearing period specified in § 148.276(b). Separate comment periods will apply to the review of documents created during the National

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Environmental Policy Act process. Both the Commandant (G-P) and MARAD review the comments received.

(c) Comments should identify problems, if any, and suggest possible solutions.

§ 148.279 What are the criteria for approval or denial of an application?

The criteria for approving or denying a license application appear in 33 U.S.C. 1503.

§ 148.281 What happens when more than one application is submitted for a deepwater port in the same application area?

(a) When more than one application is submitted for a deepwater port in the same application area under 33 U.S.C. 1504(d), only one application is approved. Except as provided in paragraph (b) of this section, applicants receive priority in the following order:

(1) An adjacent coastal State or combination of States, political subdivision of the State, or an agency or instrumentality, including a wholly owned corporation of the State;

(2) A person that is:

(i) Not engaged in producing, refining, or marketing oil;

(ii) Not an affiliate of a person engaged in producing, refining, or marketing oil; or

(iii) Not an affiliate of a person engaged in producing, refining, or marketing oil; and then

(3) Any other applicant.

(b) MARAD may also approve one of the proposed deepwater ports if it determines that that port will best serve the national interest. In making this determination, MARAD considers:

(1) The degree to which each deepwater port will affect the environment, as determined under the review criteria in subpart G to this part;

(2) The differences between the anticipated completion dates of the deepwater ports; and

(3) The differences in costs for construction and operation of the ports that would be passed on to consumers of oil.

(c) This section does not apply to applications for natural gas deepwater ports.